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JAMES R.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 772

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC. — *Petitioner*

v.

STATE OF ARKANSAS, *ex rel.* BRUCE BENNETT, ATTORNEY GENERAL — *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of Arkansas is reported as *National Association for the Advancement of Colored People, Inc. v. State of Arkansas, ex rel. Bruce Bennett, Attorney General*, ... Ark. ..., at Law Reporter, Arkansas, Vol. 104, No. 13, p. 441, December 22, 1958, 319 S.W. 2d 33.

JURISDICTION

The jurisdictional requirements are adequately set forth in the petition below.

QUESTION PRESENTED

The issue is adequately stated in the petition.

STATEMENT

The following additional statement is submitted to the court. This was an original action in the Pulaski Chancery Court, Little Rock, Arkansas, against petitioner alleging they had operated in the State of Arkansas for seven years as a foreign corporation without paying the franchise tax of $50.00 per year under the corporate laws of the state. Arkansas law provides for an annual franchise tax of $50.00 per year for such corporations that fall in the classification as the petitioner herein. After the filing of the suit respondent proceeded under the discovery statutes of the state and propounded certain questions to petitioner's local representative, Daisy Bates. It should be noted that petitioner is domiciled in New York State and in turn charters so called "State Conference of Branches". The "State Conference" in turn charters "local branches". Petitioner through its local representative in answer to questions by respondent stated that they had "27 local branches" in Arkansas, but failed and refused to give names of the officers, agents, servants, employees and representatives of these 27 local branches (R. Exhibits 1 & 2).

ARGUMENT

The issue presented here is not similar to the case before the court in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449, and the decision of the Supreme Court of Arkansas is not in conflict with that or any other decision of this Court.

I

Remembering that this was a suit for the collection of seven years franchise taxes it is readily apparent that the State of Arkansas needed and was entitled to the names of individual officers, agents, servants, employees and representatives of the local branches in order to subpoena them for the purpose of determining how long these local branches had been chartered by the Arkansas Conference of Branches. Had the case gone to trial on its merits respondent herein would have been in the untenable position of not knowing whom to subpoena. There is no question involving the immunity from the scrutiny of "rank and file" membership lists at any level of petitioner's organization, national, state or local since such membership lists have not been ordered disclosed by either the Chancery Court of Pulaski County or the Supreme Court of Arkansas. Respondent urges this Court to bear in mind that throughout the proceedings below petitioner apparently asserted a right to withhold all of the information requested and did not and has not complied with the order of the lower court. Not until the filing of the petition herein did petitioner admit the right of the State of Arkansas to have any of the information ordered disclosed. The information was sought in connection with a suit involving the payment of corporation taxes as required by Act 304, Ark. Acts of 1953, § 2 (compiled as Ark. Stats. [1947 (1957 Supp.)] § 84-1834). Petitioner

continues to object to the divulging of officers, agents, servants, employees and representatives of the Arkansas State Conference of Branches and local branches. The question of Arkansas' right to have the names of its "rank and file members" divulged as indicated on page 8 of petitioner's brief has not been urged and in that respect the brief is in gross error. As matters now stand (1) petitioner has not admitted its presence, conduct of activities or corporate tax liability in the State of Arkansas, except by allowing a default judgment to be taken against it, (2) prior to the filing of the petition herein petitioner has not offered to comply in any respect with the order of the Chancery Court of Pulaski County. In view of the above refusal to disclose the information required by court order it is obvious that the Attorney General of Arkansas was and is entitled to the information for the purpose of determining petitioner's status within the State of Arkansas.

II

This Court in *National Association for the Advancement of Colored People* v. *Alabama*, *supra*, inquired into ". . . the substantiality of Alabama's interest in obtaining the membership lists" involved. This was a fact question and the fact was determined that ". . . Alabama has fallen short of showing a controlling justification of the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have". Since the order of the Pulaski Chancery Court (R. 24 a & b) plainly shows that whatever the decision of this Court the records and other information will not be supplied to the Attorney General since petitioner has deposited the amount sued for in the registry of the court and will forfeit same should this Court hold that the records and information involved herein are non-privi-

legal. Petitioner is either asking this Court to go one step further than the *National Association for the Advancement of Colored People* v. *Alabama* ruling and hold that as a matter of law such records are privileged or is asking this Court to rule on an academic question of fact which under the circumstances can serve no useful judicial purpose.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

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